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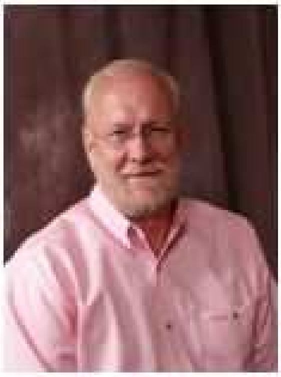

TRANSPORTATION REPORT

From: Terry Whiteside

To: The Montana Wheat and Barley Committee

Date: June 16, 2010

The Pace For Passage Of Rail Legislation Is Picking Up

In an article by John Boyd in the Journal of Commerce and an article reported by the UTU [United Transportation Union] – one of the largest railroad unions, Chairman Oberstar of the powerful House Transportation & Infrastructure Committee has met with Chairman Rockefeller of the Senate Commerce Committee and are working towards an agreed goal of passing a comprehensive STB Reauthorization and Rail Reform bill in this Congress.

Chairman Oberstar said a pending rail regulatory overhaul should include a major change in Surface Transportation Board procedures to remove a burden from shippers who challenge freight rates. The House leader lays out strategy for passing legislation this year.

Rep. James L. Oberstar, Chairman of the House Transportation and Infrastructure Committee, said a pending rail regulatory overhaul should include a major change in Surface Transportation Board procedures to remove a burden from shippers who challenge freight rates.

Speaking to a National Industrial Transportation League policy forum last Thursday, the Minnesota Democrat said the STB bill should end the practice of requiring shippers to create a virtual railroad in a major rate challenge, to prove railroads are charging excessive rates.

Sen. Jay Rockefeller, D-W.Va., who chairs that committee and is the legislations key sponsor, told rail shippers in April he remains committed to passing the bill this year, and that he and Oberstar were discussing how to do it.

“I’m working with Sen. Rockefeller. We met just recently to fashion a common bill”, Oberstar told the NITL audience.

“Their plan”, Oberstar said, “is the Senate would move first on it, but we’d have an identical bill. They move it; well introduce ours, and won’t need a (House-Senate) conference to iron out any difference because they would have the same language”. Instead, Oberstar said, we’ll send it right to the White House, where it will be signed into law by President Obama.

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Rail officials and rail shippers have been separately holding closed talks with Commerce Committee staff to alter some provisions, and it is not clear when or how the measure might move before the full Senate for a vote.

Oberstar ticked off a list of provisions the planned final bill will have, nearly all of which are already in the Senate measure.

But Oberstar said it is absolutely irrational for the Surface Transportation Board to require a petitioner on a rate issue to create a virtual railroad. “If you as a grain shipper, coal shipper, coal consumer are so damn good at running a railroad, you’d run it yourself instead of creating it on paper or in a computer. That’s one of many anomalies here that we need to eliminate. We’re working on doing that. I’m very optimistic about getting this done before the end of this session.”

Roll Call, June 15, 2010, How to Make Freight Rail More Competitive By Rep. Tim Walz

America's transportation system is the envy of the world. Our network of land, air and sea infrastructure gives consumers access to a wealth of products, from all over the United States and the globe.

Our freight railroads are an important part of the nation's transportation system. This importance has been reflected in government policy since the 1860s, when the government gave thousands of miles of land to the railroads in order to encourage a network of transcontinental lines to the West Coast. More recently, freight railroads were the largest beneficiaries of $1.5 billion in economic stimulus grants awarded by the Department of Transportation and will also benefit from $8 billion in stimulus money being spent on upgrades for high-speed rail service. These public-private investments will help maintain a robust rail infrastructure to transport goods across the country.

But in return, we need to ensure that our small businesses and manufacturers that make use of the rail system are treated fairly. Unfortunately, for many businesses around the country, a lack of competition in the rail industry has led to rising costs and shrinking profits. These businesses, already struggling to survive in this tough economic climate, are forced to devote greater and greater shares of their operating expenses to cover the rising cost of rail service, instead of reinvesting this money into future economic growth.

I believe strongly in free markets, and I think that markets work best when competition is allowed to flourish. Competitive markets spur innovation and permit customers to shop around. But when competition disappears, the need for a referee on the field becomes more pressing.

Unfortunately for many businesses that ship by rail, competition among railroads for their business simply does not exist. Of the more than 2 billion tons of freight shipped on American railroads last year, roughly 44 percent was "captive," meaning that the companies shipping the products only have access to one railroad. These captive shippers have no choice but to pay whatever rate the railroad decides to charge them. As a result, they frequently pay more than double - and sometimes triple or quadruple - the rates to ship their products, compared to companies with access to competing railroads.

Excessive shipping costs in turn get passed along to consumers. A Consumer Federation of America report last year found that excessive rail rates cost consumers almost $3 billion annually in higher prices. One proposal before Congress would help restore some balance and competition to the rail industry. This would give the federal agency in charge of regulating rail rates and service, the Surface Transportation Board, some new authority to exercise on behalf of rail shippers and, ultimately, consumers.

This proposal would not represent "reregulation," as its opponents like to suggest. Instead, it would restore competition and fairness to a broken system that is badly in need of repair. Promoting competition in the rail industry is an issue that cuts across party lines.

Late last year, the Senate Commerce Committee voted unanimously to approve a bipartisan bill to make it easier for rail shippers to make their case before the STB. I hope the House will take up this important debate and acknowledge the incredibly important role the freight rail industry plays in transporting goods throughout the United States.

Editors Note: Rep. Tim Walz (D-Minn.) is a member of the Transportation and Infrastructure Committee.

Railroad unchecked power hurts business and consumers

By Gene Carrier | Published: 06/15/10 at 12:00 AM

One can hardly turn on a financial news program lately without hearing an analyst speak bullishly about America's railroads. But, lost in this clatter is the fact that the railroads' big profits are owed largely to the unrestrained monopoly pricing power they exert over many of their customers.

If Congress really wants to do something to help our economy, they need to support a competitive marketplace for railroads and their shippers. Companies like mine are counting on it.

The East Texas Asphalt Company is a family-owned company with four facilities around east Texas. Since our founding more than fifty years ago, we have endured recessions, construction bubbles and even hurricanes. What we may not survive, however, is our treatment at the hands of freight railroads.

Like many companies, we depend on the railroads for raw materials. In the first four decades of our company's existence, this was not a problem. That began to change gradually over the past fifteen years, however, as America's freight railroad companies were slowly consolidated into four major railroads that today control over 90 percent of our nation's rail traffic. Since then, our partnership with the railroads has deteriorated, and our company has endured confusing and exorbitant rate changes that are hurting our business and our workers.

Facing similar difficulties, many companies would simply take their business elsewhere. Yet, that is not an option for us. All of our facilities and roughly 90 percent of our suppliers have access to a single railroad, which in the railroad business makes us known as a "captive" shipper. As captive shippers, we have nowhere to turn when we suspect we are getting a bad deal from the railroad. And we are not alone. Thirty-four percent of rail traffic in this country, by weight, is held captive by a single railroad.

Not surprisingly, shippers with access to competing railroads tend to fare better on pricing than those who do not. Outside of Houston, a competitor of our company is favorably located near a stretch of track that is serviced by two railroads. Our local facility has access to just one. As a result, we pay rates that are nearly 2.5 times higher than our competitor, even though we are making equivalent shipments that cover nearly the same distance.

In addition to high rates, our company must also contend with inconsistent service. Ten years ago, we partnered with a railroad in the construction of a rail yard to service a new plant. The location was chosen carefully, as it allowed for direct routes of shipments from quarries located to the south. But soon after its construction, the railroad changed its mind. They switched the direction of trains on that stretch of track, meaning our shipments had to take a more circuitous route to our facility. This exposed our shipments to more miles and higher rates, and costs at that facility have risen 166 percent since the switch.

The excessive rates and unreliable service of the big railroads impose additional costs on businesses like mine that easily add up to millions of dollars per year. This impacts our customers and our workers. When customers buy our products, 59 cents out of every dollar is owed to rail costs. And while we have not laid-off employees, we have had to cut back drastically on their hours at a time when few can afford the lost income.

American consumers ultimately pay the price for the unchecked power of the railroads. Last year, the Consumer Federation of America found that excessive freight-rail pricing is costing consumers roughly $3 billion per year in higher prices on everything from their utility bill to their grocery bill.

Under existing law, there is little that can be done about the railroads' pricing schemes and spotty service. Unlike other major industries, the freight railroads are exempt from antitrust laws. Captive shippers can file claims with the Surface Transportation Board, but it is a long and expensive process that is tilted heavily in favor of large corporations like the railroads.

Last December, the Senate Commerce Committee unanimously approved legislation that would strengthen the Surface Transportation Board, restore fairness to railroad pricing and provide relief to shippers and consumers getting bullied by the big railroads. Along with removing the railroads' monopoly protections, this would be a huge first step in building a fair and competitive marketplace for shippers and the railroads.

Unfortunately, the clock keeps ticking on this Congress as their priority list keeps growing longer. But if Members of Congress want to help American businesses and families, then this rail relief legislation needs to keep moving down the tracks toward enactment this year.

Editor's Note: Gene Carrier is vice president of the East Texas Asphalt Company, LTD based in Lufkin, Texas.

Farmers Fight With Railroads Over Rates

By LIAM PLEVEN JUNE 14, 2010 WSJ Press

The race to profit from Asia's growing appetite for corn, soybeans and other crops is resurrecting once-dormant disputes between two mainstays of the nation's economy: Farmers and railroads.

Farmers and their allies contend that railroads are taking advantage of their dominance to boost rates for carrying goods to shipping ports. Railroads counter that they have increased rates because of rising fuel and other costs, and say they needed to restore the nation's rail network to financial health.

Dan Koeck for The Wall Street Journal

Bart Schott is fighting the rates Burlington Northern Santa Fe charges farmers to ship corn to market. Mr. Schott owns a 4,000-acre farm near Kulm, N.D.

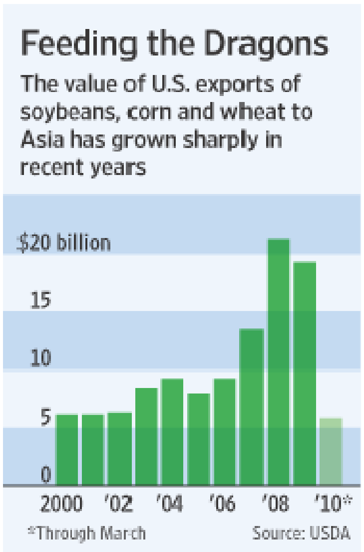
The two sides are battling over legislation and are embroiled in an increasing array of legal spats that could determine who gets to benefit most from the anticipated surge in exports.

In Congress, farmers, grain merchants and other rail shippers are seeking tougher regulation after the government found freight rates for many crops rose almost 50% from 2003 to 2007. They have won some support: a Senate bill introduced in December would give federal regulators at the Surface Transportation Board new powers to police rates, a bill opposed by railroads.

Two of the biggest names in the business also are duking it out before those regulators. Commodities giant Cargill Inc. has accused Warren Buffett's Burlington Northern Santa Fe of effectively double dipping on fuel charges by including that expense in its base rate, then adding a fuel surcharge. Burlington Northern disputes the claim, which is similar to complaints in a pending lawsuit against railroads by other customers.

At stake are billions of dollars in potential revenue to be earned from an anticipated jump in U.S. crop exports to Asian nations, particularly China. U.S. farmers already send about $20 billion of corn, soybeans and wheat to Asia annually, up from $6 billion a decade ago.

Railroads are well-positioned because in many parts of the country they are the sole mode of transport for getting grains from certain farmland states to coastal ports. It isn't just grains shippers—coal customers and chemical makers also are pushing for changes.



In some cases, railroads are charging more to farmers who are isolated from other economically viable means of transport like barges.

The railroads critics say that is a sign of the industry's pricing power. It costs more to ship corn from Edgeley, N.D., to Seattle on Burlington Northern—$1.18 a bushel—than it does from Hanley Falls, Minn.—$1.17 a bushel. That is even though Edgeley is 185 miles closer to Seattle, according to the railroad. Hanley Falls is far closer to the Mississippi River, making barge shipments to the Gulf Coast a more competitive alternative for farmers there.

Railroads are able to do this in part because of rules established when the industry was deregulated in the early 1980s. In March, 14 state attorneys general called for new rules "to prevent abuse of captive shippers served by a dominant railroad."

Both sides remain financially vulnerable after troubles in recent decades, when many railroads went bankrupt and a farming crisis forced many farmers off the land.

"You had a network that was fragile at best," said John Gray, head of policy and economics for the Association of American Railroads, which lobbies for Burlington Northern and other big railroads. "The situation has improved. … It is getting closer to adequacy."

Many farmers say they are hurt by shipping rates they can't pass on to customers in their own fiercely competitive commodities markets.

"We're price-getters, not price-setters," said Bart Schott, who farms 4,000 acres in Kulm, N.D., and is vice president of the National Corn Growers Association, which is preparing its own study of rail rates. "Every time your expenses go up, it takes away from your bottom line."

Burlington Northern, of Fort Worth, Texas, has a bigger bet riding on crop shipments than most big railroads. It carried 42% of grain shipments in 2007, according to the Agriculture Department, and generated 21% of its revenue from agriculture in 2009. That kind of market position is what enticed Mr. Buffett this year to buy the piece of Burlington Northern that he didn't already own.

Agriculture "has tremendous upside in this country, from an export standpoint," said Kevin Kaufman, who heads Burlington Northern's agriculture business. But, he adds, "Without a viable transportation system, it won't make a difference."

The high stakes in the disputes mean that striking the right balance between railroads and shippers will be critical, said Jason Seidl, a railroad analyst at Dahlman Rose & Co.

Railroads and farmers have been battling over similar issues since the 1800s. The latest round stems in part from the Democratic takeover of the Senate in 2009, when longtime farming ally Sen. John D. Rockefeller (D., W.Va.) became head of the commerce committee.

In December, Sen. Rockefeller introduced a bill that would make it easier to challenge rates before the Surface Transportation Board and let the board launch its own rate probes instead of solely responding to complaints. The bipartisan bill is in its formative stages and it is unclear what the final version could look like.

The Congressional Budget Office said the cost to railroads from the bill "could be substantial."

While railroads raised rates 46% for key crops in the four years ended in 2007, costs for all other commodities rose 32%, according to an April study by the Agriculture Department. The study pinned higher rates on rising railroad costs and infrastructure investments, as well as "billions in merger premiums, which causes higher rates for shippers."

Rates have fluctuated since then. Rates generally rose about 15% in 2008, according to another study, prepared for federal regulators by consultants Christensen Associates.

Preliminary data indicate that rates fell in 2009 amid the financial crisis, the Christensen study found. The report concluded that lowering shipping costs for one group of customers could mean railroads would have to raise the cost to other customers, otherwise it would put the railroads in financial jeopardy.